

AMENDED IN SENATE APRIL 18, 2005

**SENATE BILL**

**No. 58**

**Introduced by Senator Murray**  
(Coauthor: Assembly Member Pavley)

January 12, 2005

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An act ~~relating to economic development~~ to amend Section 23036 of, and to add Sections 6902.5, 17053.35, and 23635 to, the Revenue and Taxation Code, relating to taxation, and making an appropriation therefor, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

SB 58, as amended, Murray. ~~Economic development—Taxes:~~ credits: qualified motion picture production.

*The Personal Income Tax Law and the Corporation Tax Law authorize various credits against the taxes imposed by those laws.*

*This bill, in accordance with legislative findings contained in this bill, would authorize a credit against those taxes for taxable years beginning on or after January 1, 2005, subject to specified limitations, in an amount equal to 15% of the qualified amount for qualified wages paid or incurred with respect to the production of each qualified motion picture.*

*This bill would provide that any portion of the credit that is in excess of the taxpayer's liability is refundable, as applicable. This bill, by authorizing the payment of these amounts, would make an appropriation.*

*The Corporation Tax Law defines the term "tax" for those purposes, and provides that credits shall be allowed against the tax in a specified order.*

*This bill would add to that list of credits, credits that contain refundable provisions, but do not contain carryover provisions.*

*This bill would, in lieu of the credits, allow a refund of, or credit against liability for, taxes paid or payable, as applicable, under the Sales and Use Tax Law. This bill would impose specified duties on the California Film Commission and the Franchise Tax Board in administering the credits.*

*This bill would require the Business, Transportation and Housing Agency to report to the Legislature regarding the effectiveness of the tax incentives created by the bill.*

*The bill would require a taxpayer to certify under penalty of perjury that he or she is the taxpayer entitled to claim certain deductions with respect to a qualified motion picture, thus imposing a state-mandated local program by expanding the scope of an existing crime.*

*The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.*

*This bill would provide that no reimbursement is required by this act for a specified reason.*

*This bill would take effect immediately as a tax levy.*

~~Existing law provides for various programs for the development of economic opportunities in the state.~~

~~This bill would express the intent of the Legislature to enact legislation to discourage the practice of producing and filming motion pictures outside the state.~~

Vote: ~~majority~~<sup>2/3</sup>. Appropriation: ~~no~~-yes. Fiscal committee: ~~no~~ yes. State-mandated local program: ~~no~~-yes.

*The people of the State of California do enact as follows:*

- 1     SECTION 1. *The Legislature finds and declares all of the*
- 2     *following:*
- 3     (a) *Existing law provides for various programs for the*
- 4     *development of economic opportunities in the state.*
- 5     (b) *The entertainment industry plays a vital role in sustaining*
- 6     *California's economy and past legislation enacted in 1985*
- 7     *created the California Film Commission, currently existing*
- 8     *within the Business, Transportation and Housing Agency, to*
- 9     *facilitate, retain, and attract filming in California.*
- 10    (c) *The Legislature intends to enact legislation to discourage*
- 11    *the practice of producing and filming motion pictures outside the*

1 state by targeting those productions that are most susceptible to  
2 following lower costs in other regions of the world. This trend  
3 called “runaway production” means the practice of producing  
4 and filming motion pictures outside this state.

5 (d) The Legislature recognizes that film, television, and  
6 commercial production activity contributed \$34.3 billion to  
7 California’s economy in 2002 and sustains more than 245,000  
8 jobs. Film, television, and commercial productions create and  
9 sustain jobs, support thousands of small businesses, and generate  
10 significant revenue for both state and local governments.  
11 However, California’s dominance as the premier location for  
12 movie, television, and commercial production is being eroded by  
13 competition from other states and foreign countries. As these  
14 other regions draw more motion picture production and develop  
15 their own long-term infrastructure, entertainment jobs, and  
16 businesses traditionally based in California will continue to flee.

17 SEC. 2. Section 6902.5 is added to the Revenue and Taxation  
18 Code, to read:

19 6902.5. (a) (1) In lieu of claiming the credit allowed by  
20 Section 17053.35 or 23635, a person may claim either a refund  
21 of sales or use taxes paid or incurred under this part, or a credit  
22 against liability for sales or use taxes due under this part, that is  
23 equal to the credit amount or any portion thereof that would  
24 otherwise be allowed pursuant to those sections.

25 (2) Any person who claims a refund or credit under this  
26 section shall make an irrevocable election to waive the  
27 equivalent amount of credit allowed under Section 17053.35 or  
28 23635. Any refund or credit claimed under this section shall be  
29 in lieu of claiming any credit under Section 17053.35 or 23635.  
30 Any person electing to file a claim for refund pursuant to this  
31 section shall provide a copy of the personal income or  
32 corporation tax return on which the tax liability was assessed for  
33 which the in-lieu refund is being claimed under this section.

34 (b) Notwithstanding Section 6961, the board may recover any  
35 refund or credit, or part thereof, that is erroneously made  
36 pursuant to this section. In recovering any erroneous refund or  
37 credit made pursuant to this section, the board, in its discretion,  
38 may issue a deficiency determination in accordance with Article  
39 2 (commencing with Section 6481) or Article 4 (commencing  
40 with Section 6536) of Chapter 5. Except in the case of fraud, that

1 *determination shall be made within three years from the last day*  
2 *of the month following the quarterly period in which the board*  
3 *approved the refund.*

4 *(c) The board shall provide an annual listing to the Franchise*  
5 *Tax Board, in a form and manner agreed upon by the board and*  
6 *the Franchise Tax Board, of the persons who during the year*  
7 *have claimed a refund or credit of sales or use tax under this*  
8 *section and the amount of the refund or credit allowed to each*  
9 *person.*

10 *(d) Any refund, which may exceed the sales and use tax paid*  
11 *by that person, approved by the board pursuant to this section*  
12 *shall, upon an appropriation by the Legislature, be payable from*  
13 *the General Fund.*

14 *SEC. 3. Section 17053.35 is added to the Revenue and*  
15 *Taxation Code, to read:*

16 *17053.35. (a) (1) For taxable years beginning on or after*  
17 *January 1, 2005, subject to the limitation in paragraph (2), there*  
18 *shall be allowed to a qualified taxpayer as a credit against the*  
19 *“net tax,” as defined in Section 17039, an amount equal to 15*  
20 *percent of the qualified amount.*

21 *(2) The credit allowed by paragraph (1) shall not exceed five*  
22 *million dollars (\$5,000,000) per qualified motion picture.*

23 *(b) For purposes of this section, the following definitions shall*  
24 *apply:*

25 *(1) “Ancillary product” means any article for sale to the*  
26 *public that contains a portion of or any element of the motion*  
27 *picture.*

28 *(2) “Clip use” means a use of any portion of a motion picture*  
29 *used in the qualified motion picture.*

30 *(3) “Delayed residual compensation” means supplemental*  
31 *compensation paid at the time that a motion picture is exhibited*  
32 *through new use, reuse, clip use, or in secondary markets, as*  
33 *distinguished from payments made during production.*

34 *(4) (A) “Employee fringe benefits” means the amount*  
35 *allowable as a deduction under this part to any taxpayer*  
36 *involved in the production of the qualified motion picture for any*  
37 *taxable year during the production period with respect to any of*  
38 *the following:*

39 *(i) Employer contributions under any stock, bonus, pension,*  
40 *profit-sharing, annuity, or similar plan.*

1     (ii) *Employer-provided coverage under any accident or health*  
2     *plan for employees.*

3     (iii) *The cost of life or disability insurance provided to*  
4     *employees.*

5     (B) *Any amount treated as wages under clause (i) of*  
6     *subparagraph (A) of paragraph (14) shall not be taken into*  
7     *account under this paragraph.*

8     (5) *“Licensing” means any grant of rights to distribute the*  
9     *motion picture, in whole or in part.*

10    (6) *“New use” means any use of a motion picture in a medium*  
11    *other than the medium for which it was initially created.*

12    (7) *“Production period” means the period commencing with*  
13    *approval to proceed with the production project and ending with*  
14    *the date the qualified motion picture is either completed or*  
15    *placed in service.*

16    (8) (A) *“Qualified amount” means both of the following:*

17    (i) *The total amount paid or incurred during the production*  
18    *period for qualified wages with respect to the production of each*  
19    *qualified motion picture.*

20    (ii) *The total amount paid or incurred during the production*  
21    *period for qualified property.*

22    (B) *Notwithstanding subparagraph (A), the term “qualified*  
23    *amount” shall not include any qualified wages paid or incurred*  
24    *for services performed nor any qualified property purchased or*  
25    *leased before January 1, 2006.*

26    (9) *“Qualified entity” means a personal service corporation*  
27    *as defined in Section 269A(b)(1) of the Internal Revenue Code, a*  
28    *payroll services corporation, or any entity receiving qualified*  
29    *wages with respect to services performed by a qualified*  
30    *individual.*

31    (10) (A) *“Qualified individual” means any individual who*  
32    *performs services during the production period in an activity*  
33    *related to the production of a qualified motion picture.*

34    (B) *“Qualified individual” shall not include either of the*  
35    *following:*

36    (i) *Any individual described in subparagraph (A), (B), or (C)*  
37    *of Section 51(i)(1) of the Internal Revenue Code.*

38    (ii) *Any 5 percent owner, as defined in Section 416(i)(1)(B) of*  
39    *the Internal Revenue Code, of the qualified taxpayer.*

(11) (A) *“Qualified motion picture” means any motion picture that is produced, adapted, or altered for exploitation in, on, or through any medium or by any device, including, but not limited to, a motion picture produced for exploitation in movie theaters, through any form of television, videotapes, videodiscs, DVDs, or any other digital format or on commercial carriers, for any of the purposes listed in clause (i). “Qualified motion picture” shall not include commercial advertising, music videos, or any motion picture produced for private noncommercial use, such as weddings or graduations, or by students made as part of any educational course. To qualify as a “qualified motion picture,” all of the following additional conditions shall be satisfied:*

*(i) The qualified motion picture shall be a feature with a minimum budget of five hundred thousand dollars (\$500,000), a movie of the week or miniseries or single episode of a television series with a minimum budget of five hundred thousand dollars (\$500,000), or a television series new to California for the first 66 episodes in California. The qualified motion picture shall not be a news program, current events or public events program, talk show, game show, sporting event or activity, awards show, telethon or other production that solicits funds, reality television program, clip-based programming if more than 50 percent of the content is comprised of licensed footage, documentaries, variety programs, daytime dramas, strip shows, one-half hour (air-time) episodic television shows, or any production that falls within the recordkeeping requirements of Section 2257 of Title 18 of the United States Code.*

*(ii) At least 75 percent of the total production days of a qualified motion picture on or after January 1, 2006, occur wholly in California or if 75 percent of the total production budget excluding nonqualifying wages and nonqualifying expenses occurs within this state.*

*(iii) Production of the qualified motion picture is either completed or placed in service.*

*(iv) The copyright for the motion picture is registered with the United States Copyright Office pursuant to Title 17 of the United States Code.*

1 (v) *Principal photography of the qualified motion picture*  
2 *begins within 150 days of the designation of the taxpayer as a*  
3 *qualified taxpayer by the California Film Commission.*

4 (B) *For the purposes of clause (i) of subparagraph (A), the*  
5 *following additional rules apply:*

6 (i) *In computing the total wages paid or incurred for the*  
7 *production of a qualified motion picture, all amounts paid or*  
8 *incurred by all persons or entities that share in the costs of the*  
9 *qualified motion picture shall be aggregated.*

10 (ii) *In the case of an episodic television series, each episode*  
11 *shall be treated as a separate qualified motion picture.*

12 (C) *For purposes of computing the limitations under this*  
13 *paragraph, “wages” means all amounts described in*  
14 *subparagraph (A) of paragraph (14), provided that these*  
15 *amounts are paid for services performed or rendered within this*  
16 *state.*

17 (12) *“Qualified property” for purposes of this section means*  
18 *purchased or leased tangible personal property used principally*  
19 *in the production of a qualified motion picture, which is subject*  
20 *to tax pursuant to Part 1 (commencing with Section 6001) of*  
21 *Division 2.*

22 (13) *Except as otherwise provided, “qualified taxpayer”*  
23 *means a taxpayer who has paid or incurred the expenses for the*  
24 *qualified amount, and has been allocated tax credits by the*  
25 *California Film Commission pursuant to subdivision (i).*

26 (14) (A) *“Qualified wages” means all of the following:*

27 (i) *Any wages required to be reported under Section 13050 of*  
28 *the Unemployment Insurance Code that were paid or incurred by*  
29 *any taxpayer involved in the production of a qualified motion*  
30 *picture with respect to a qualified individual for services*  
31 *performed on the qualified motion picture production within this*  
32 *state.*

33 (ii) *The portion of any employee fringe benefits paid or*  
34 *incurred by any taxpayer involved in the production of the*  
35 *qualified motion picture that are properly allocable to qualified*  
36 *wage amounts described in clause (i).*

37 (iii) *Any payments made to a qualified entity for services*  
38 *performed in this state by qualified individuals within the*  
39 *meaning of paragraph (10).*

1 (iv) *Remuneration paid to an independent contractor who is a*  
2 *qualified individual for services performed within this state by*  
3 *that qualified individual.*

4 (B) *“Qualified wages” shall not include any of the following:*

5 (i) *Expenses, including wages, for legal or accounting services*  
6 *(except production accountants).*

7 (ii) *Expenses, including wages, in excess of the first*  
8 *twenty-five thousand dollars (\$25,000) per qualified motion*  
9 *picture for writers, directors, including music directors, music*  
10 *composers, music supervisors, producers and performers, other*  
11 *than background actors with no scripted lines.*

12 (iii) *Expenses, including wages, related to new use, reuse, clip*  
13 *use, licensing, secondary markets, or delayed residual*  
14 *compensation, or the creation of any ancillary product,*  
15 *including, but not limited to, a soundtrack album, toy game,*  
16 *trailer, or teaser.*

17 (iv) *Expenses, including wages, paid or incurred with respect*  
18 *to acquisition, development, turnaround, or any rights thereto.*

19 (v) *Expenses, including wages, related to financing, overhead,*  
20 *marketing, promotion, or distribution of a qualified motion*  
21 *picture.*

22 (15) *“Reuse” means any use of a qualified motion picture in*  
23 *the same medium for which it was created, following the initial*  
24 *use in that medium.*

25 (16) *“Secondary markets” means media in which a qualified*  
26 *motion picture is exhibited following the initial media in which it*  
27 *is exhibited.*

28 (c) (1) *Notwithstanding subdivision (g) of Section 17039,*  
29 *relating to credits attributable to a disregarded business entity,*  
30 *in the case where the credit allowed by this section exceeds the*  
31 *taxpayer’s tax liability computed under this part, the excess shall*  
32 *be credited against other amounts due, if any, from the taxpayer*  
33 *and the balance, if any, shall be refunded to the taxpayer.*

34 (2) *Those amounts that are determined by the Franchise Tax*  
35 *Board to be necessary to make the refunds required by this*  
36 *subdivision shall be transferred from the Personal Income Tax*  
37 *Fund to the Tax Relief and Refund Account established pursuant*  
38 *to Section 19611 and shall, notwithstanding Section 13340 of the*  
39 *Government Code, be continuously appropriated from that*



1 account, without regard to fiscal years, to the board for the  
2 purpose of making those refunds.

3 (d) The amount of any credit allowed under this section  
4 (without regard to whether the “net tax,” as defined in Section  
5 17039, is reduced) to the qualified taxpayer shall be treated as a  
6 separate item of income of the qualified taxpayer from a source  
7 wholly within this state for the taxable year in which the credit is  
8 allowed.

9 (e) No credit pursuant to this section shall be allowed unless  
10 the qualified taxpayer substantiates by adequate books and  
11 records or by sufficient evidence corroborating his or her own  
12 statement that:

13 (1) The qualified wages on which the credit was calculated  
14 were actually paid or incurred in the amount claimed.  
15 Substantiation of this item shall include proof that the services  
16 were performed in California.

17 (2) The motion picture was a qualified motion picture.  
18 Substantiation of this item shall include the following:

19 (A) Identification of each qualified individual.

20 (B) The specific start and end dates of production.

21 (C) The total wages paid and amount and type of qualified  
22 property purchased.

23 (D) The amount of qualified wages paid to each qualified  
24 individual.

25 (E) The copyright registration number, as reflected on the  
26 certificate of registration issued under the authority of Section  
27 410 of Title 17 of the United States Code, relating to registration  
28 if claim and issuance of certificate. The registration number shall  
29 be provided on the return claiming the credit.

30 (f) The Franchise Tax Board may prescribe rules and  
31 regulations to carry out the purposes of this section including  
32 any rules and regulations necessary to establish procedures,  
33 processes, requirements, and rules identified in or required to  
34 implement this section.

35 (g) Subdivision (c) of Section 19341, relating to interest on  
36 overpayments, shall not apply to any return claiming a credit  
37 under this section.

38 (h) If the qualified taxpayer fails to provide the copyright  
39 registration number as required in subparagraph (E) of  
40 paragraph (2) of subdivision (f), or fails to attach the

1 *certification, the credit shall be disallowed and assessed and*  
2 *collected under Section 19051.*

3 *(i) For purposes of this section, the California Film*  
4 *Commission shall do all of the following:*

5 *(1) Allocate tax credits to qualified taxpayers, and, by March*  
6 *1, 2006, promulgate rules and regulations necessary to*  
7 *administer this section.*

8 *(2) Establish a procedure for qualified taxpayers to file with*  
9 *the commission a written application, on a form jointly*  
10 *prescribed by the commission and the Franchise Tax Board, for*  
11 *allocation of tax credits. The application shall be filed under*  
12 *penalty of perjury and include, but not be limited to, the*  
13 *following information:*

14 *(A) The budget for the motion picture production.*

15 *(B) The number of production days.*

16 *(C) A financing plan for the production.*

17 *(D) Any other information deemed relevant by the*  
18 *commission.*

19 *(3) Determine and designate who is a qualified taxpayer*  
20 *meeting the requirements of this section.*

21 *(4) Process and approve, or reject, all applications on a*  
22 *first-come, first-served basis.*

23 *(j) The total aggregate amount of credits that may be allocated*  
24 *in any calendar year pursuant to this section and Section 23635*  
25 *shall not exceed \_\_\_\_\_ million dollars (\$\_\_\_\_\_). Any application*  
26 *for an allocation of tax credits received by the California Film*  
27 *Commission after the maximum amount of credits have been*  
28 *allocated for a particular calendar year shall be treated as an*  
29 *application for tax credits in the succeeding calendar year.*

30 *SEC. 4. Section 23036 of the Revenue and Taxation Code is*  
31 *amended to read:*

32 *23036. (a) (1) The term “tax” includes any of the following:*

33 *(A) The tax imposed under Chapter 2 (commencing with*  
34 *Section 23101).*

35 *(B) The tax imposed under Chapter 3 (commencing with*  
36 *Section 23501).*

37 *(C) The tax on unrelated business taxable income, imposed*  
38 *under Section 23731.*

39 *(D) The tax on—S “S” corporations imposed under Section*  
40 *23802.*

1 (2) The term “tax” does not include any amount imposed  
2 under paragraph (1) of subdivision (e) of Section 24667 or  
3 paragraph (2) of subdivision (f) of Section 24667.

4 (b) For purposes of Article 5 (commencing with Section  
5 18661) of Chapter 2, Article 3 (commencing with Section 19031)  
6 of Chapter 4, Article 6 (commencing with Section 19101) of  
7 Chapter 4, and Chapter 7 (commencing with Section 19501) of  
8 Part 10.2, and for purposes of Sections 18601, 19001, and 19005,  
9 the term “tax” also includes all of the following:

10 (1) The tax on limited partnerships, imposed under Section  
11 17935, the tax on limited liability companies, imposed under  
12 Section 17941, and the tax on registered limited liability  
13 partnerships and foreign limited liability partnerships imposed  
14 under Section 17948.

15 (2) The alternative minimum tax imposed under Chapter 2.5  
16 (commencing with Section 23400).

17 (3) The tax on built-in gains of—S “S” corporations, imposed  
18 under Section 23809.

19 (4) The tax on excess passive investment income of—S “S”  
20 corporations, imposed under Section 23811.

21 (c) Notwithstanding any other provision of this part, credits  
22 are allowed against the “tax” in the following order:

23 (1) Credits that do not contain carryover provisions.

24 (2) Credits that, when the credit exceeds the “tax,” allow the  
25 excess to be carried over to offset the “tax” in succeeding taxable  
26 years, except for those credits that are allowed to reduce the  
27 “tax” below the tentative minimum tax, as defined by Section  
28 23455. The order of credits within this paragraph shall be  
29 determined by the Franchise Tax Board.

30 (3) The minimum tax credit allowed by Section 23453.

31 (4) Credits that are allowed to reduce the “tax” below the  
32 tentative minimum tax, as defined by Section 23455.

33 (5) Credits for taxes withheld under Section 18662.

34 (6) *Credits that contain refundable provisions, but do not*  
35 *contain carryover provisions.*

36 (d) Notwithstanding any other provision of this part, each of  
37 the following applies:

38 (1) No credit may reduce the “tax” below the tentative  
39 minimum tax (as defined by paragraph (1) of subdivision (a) of  
40 Section 23455), except the following credits:

- 1 (A) The credit allowed by former Section 23601 (relating to  
2 solar energy).
- 3 (B) The credit allowed by former Section 23601.4 (relating to  
4 solar energy).
- 5 (C) The credit allowed by former Section 23601.5 (relating to  
6 solar energy).
- 7 (D) The credit allowed by Section 23609 (relating to research  
8 expenditures).
- 9 (E) The credit allowed by former Section 23609.5 (relating to  
10 clinical testing expenses).
- 11 (F) The credit allowed by Section 23610.5 (relating to  
12 low-income housing).
- 13 (G) The credit allowed by former Section 23612 (relating to  
14 sales and use tax credit).
- 15 (H) The credit allowed by Section 23612.2 (relating to  
16 enterprise zone sales or use tax credit).
- 17 (I) The credit allowed by former Section 23612.6 (relating to  
18 Los Angeles Revitalization Zone sales tax credit).
- 19 (J) The credit allowed by former Section 23622 (relating to  
20 enterprise zone hiring credit).
- 21 (K) The credit allowed by Section 23622.7 (relating to  
22 enterprise zone hiring credit).
- 23 (L) The credit allowed by former Section 23623 (relating to  
24 program area hiring credit).
- 25 (M) The credit allowed by former Section 23623.5 (relating to  
26 Los Angeles Revitalization Zone hiring credit).
- 27 (N) The credit allowed by former Section 23625 (relating to  
28 Los Angeles Revitalization Zone hiring credit).
- 29 (O) The credit allowed by Section 23633 (relating to targeted  
30 tax area sales or use tax credit).
- 31 (P) The credit allowed by Section 23634 (relating to targeted  
32 tax area hiring credit).
- 33 (Q) The credit allowed by Section 23649 (relating to qualified  
34 property).
- 35 (2) No credit against the tax may reduce the minimum  
36 franchise tax imposed under Chapter 2 (commencing with  
37 Section 23101).
- 38 (e) Any credit which is partially or totally denied under  
39 subdivision (d) is allowed to be carried over to reduce the “tax”  
40 in the following year, and succeeding years if necessary, if the

1 provisions relating to that credit include a provision to allow a  
2 carryover of the unused portion of that credit.

3 (f) Unless otherwise provided, any remaining carryover from a  
4 credit that has been repealed or made inoperative is allowed to be  
5 carried over under the provisions of that section as it read  
6 immediately prior to being repealed or becoming inoperative.

7 (g) Unless otherwise provided, if two or more taxpayers share  
8 in costs that would be eligible for a tax credit allowed under this  
9 part, each taxpayer is eligible to receive the tax credit in  
10 proportion to his or her respective share of the costs paid or  
11 incurred.

12 (h) Unless otherwise provided, in the case of an—S “S”  
13 corporation, any credit allowed by this part is computed at the—S  
14 “S” corporation level, and any limitation on the expenses  
15 qualifying for the credit or limitation upon the amount of the  
16 credit applies to the—S “S” corporation and to each shareholder.

17 (i) (1) With respect to any taxpayer that directly or indirectly  
18 owns an interest in a business entity that is disregarded for tax  
19 purposes pursuant to Section 23038 and any regulations  
20 thereunder, the amount of any credit or credit carryforward  
21 allowable for any taxable year attributable to the disregarded  
22 business entity is limited in accordance with paragraphs (2) and  
23 (3).

24 (2) The amount of any credit otherwise allowed under this  
25 part, including any credit carryover from prior years, that may be  
26 applied to reduce the taxpayer’s “tax,” as defined in subdivision  
27 (a), for the taxable year is limited to an amount equal to the  
28 excess of the taxpayer’s regular tax (as defined in Section  
29 23455), determined by including income attributable to the  
30 disregarded business entity that generated the credit or credit  
31 carryover, over the taxpayer’s regular tax (as defined in Section  
32 23455), determined by excluding the income attributable to that  
33 disregarded business entity. No credit is allowed if the taxpayer’s  
34 regular tax (as defined in Section 23455), determined by  
35 including the income attributable to the disregarded business  
36 entity is less than the taxpayer’s regular tax (as defined in Section  
37 23455), determined by excluding the income attributable to the  
38 disregarded business entity.

39 (3) If the amount of a credit allowed pursuant to the section  
40 establishing the credit exceeds the amount allowable under this

1 subdivision in any taxable year, the excess amount may be  
2 carried over to subsequent taxable years pursuant to subdivisions  
3 (d), (e), and (f).

4 (j) (1) Unless otherwise specifically provided, in the case of a  
5 taxpayer that is a partner or shareholder of an eligible  
6 pass-through entity described in paragraph (2), any credit passed  
7 through to the taxpayer in the taxpayer's first taxable year  
8 beginning on or after the date the credit is no longer operative  
9 may be claimed by the taxpayer in that taxable year,  
10 notwithstanding the repeal of the statute authorizing the credit  
11 prior to the close of that taxable year.

12 (2) For purposes of this subdivision, "eligible pass-through  
13 entity" means any partnership or S "S" corporation that files its  
14 return on a fiscal year basis pursuant to Section 18566, and that is  
15 entitled to a credit pursuant to this part for the taxable year that  
16 begins during the last year a credit is operative.

17 (3) This subdivision applies to credits that become inoperative  
18 on or after the operative date of the act adding this subdivision.

19 SEC. 5. Section 23635 is added to the Revenue and Taxation  
20 Code, to read:

21 23635. (a) (1) For taxable years beginning on or after  
22 January 1, 2005, subject to the limitation in paragraph (2), there  
23 shall be allowed to a qualified taxpayer as a credit against the  
24 "tax," as defined in Section 23036, an amount equal to 15  
25 percent of the qualified amount.

26 (2) The credit allowed by paragraph (1) shall not exceed five  
27 million dollars (\$5,000,000) per qualified motion picture.

28 (b) For purposes of this section, the following definitions shall  
29 apply:

30 (1) "Ancillary product" means any article for sale to the  
31 public that contains a portion of or any element of the motion  
32 picture.

33 (2) "Clip use" means a use of any portion of a motion picture  
34 used in the qualified motion picture.

35 (3) "Delayed residual compensation" means supplemental  
36 compensation paid at the time that a motion picture is exhibited  
37 through new use, reuse, clip use, or in secondary markets, as  
38 distinguished from payments made during production.

39 (4) (A) "Employee fringe benefits" means the amount  
40 allowable as a deduction under this part to any taxpayer

1 involved in the production of the qualified motion picture for any  
2 taxable year during the production period with respect to any of  
3 the following:

4 (i) Employer contributions under any stock, bonus, pension,  
5 profit-sharing, annuity, or similar plan.

6 (ii) Employer-provided coverage under any accident or health  
7 plan for employees.

8 (iii) The cost of life or disability insurance provided to  
9 employees.

10 (B) Any amount treated as wages under clause (i) of  
11 subparagraph (A) of paragraph (14) shall not be taken into  
12 account under this paragraph.

13 (5) “Licensing” means any grant of rights to distribute the  
14 motion picture, in whole or in part.

15 (6) “New use” means any use of a motion picture in a medium  
16 other than the medium for which it was initially created.

17 (7) “Production period” means the period commencing with  
18 approval to proceed with the production project and ending with  
19 the date the qualified motion picture is either completed or  
20 placed in service.

21 (8) (A) “Qualified amount” means both of the following:

22 (i) The total amount paid or incurred during the production  
23 period for qualified wages with respect to the production of each  
24 qualified motion picture.

25 (ii) The total amount paid or incurred during the production  
26 period for qualified property.

27 (B) Notwithstanding subparagraph (A), the term “qualified  
28 amount” shall not include any qualified wages paid or incurred  
29 for services performed nor any qualified property purchased or  
30 leased before January 1, 2006.

31 (9) “Qualified entity” means a personal service corporation  
32 as defined in Section 269A(b)(1) of the Internal Revenue Code, a  
33 payroll services corporation, or any entity receiving qualified  
34 wages with respect to services performed by a qualified  
35 individual.

36 (10) (A) “Qualified individual” means any individual who  
37 performs services during the production period in an activity  
38 related to the production of a qualified motion picture.

39 (B) “Qualified individual” shall not include either of the  
40 following:

1 (i) Any individual described in subparagraph (A), (B), or (C)  
2 of Section 51(i)(1) of the Internal Revenue Code.

3 (ii) Any 5 percent owner, as defined in Section 416(i)(1)(B) of  
4 the Internal Revenue Code, of the qualified taxpayer.

5 (11) (A) “Qualified motion picture” means any motion  
6 picture that is produced, adapted, or altered for exploitation in,  
7 on, or through any medium or by any device, including, but not  
8 limited to, a motion picture produced for exploitation in movie  
9 theaters, through any form of television, videotapes, videodiscs,  
10 DVDs, or any other digital format or on commercial carriers, for  
11 any of the purposes listed in clause (i). “Qualified motion  
12 picture” shall not include commercial advertising, music videos,  
13 or any motion picture produced for private noncommercial use,  
14 such as weddings or graduations, or made by students as part of  
15 any educational course. To qualify as a “qualified motion  
16 picture,” all of the following additional conditions shall be  
17 satisfied:

18 (i) The qualified motion picture shall be a feature with a  
19 minimum budget of five hundred thousand dollars (\$500,000), a  
20 movie of the week or miniseries or single episode of a television  
21 series with a minimum budget of five hundred thousand dollars  
22 (\$500,000), or a television series new to California for the first  
23 66 episodes in California. The qualified motion picture shall not  
24 be a news program, current events or public events program, talk  
25 show, game show, sporting event or activity, awards show,  
26 telethon or other production that solicits funds, reality television  
27 program, clip-based programming if more than 50 percent of the  
28 content is comprised of licensed footage, documentaries, variety  
29 programs, daytime dramas, strip shows, one-half hour (air-time)  
30 episodic television shows, or any production that falls within the  
31 recordkeeping requirements of Section 2257 of Title 18 of the  
32 United States Code.

33 (ii) At least 75 percent of the total production days of a  
34 qualified motion picture on or after January 1, 2006, occur  
35 wholly in California or if 75 percent of the total production  
36 budget excluding nonqualifying wages and nonqualifying  
37 expenses occurs within this state.

38 (iii) Production of the motion picture is complete, and the  
39 motion picture is placed in service for purposes of the qualified



1 *taxpayer claiming amortization deductions under Section 167 of*  
2 *the Internal Revenue Code for federal income tax purposes.*

3 *(iv) The copyright for the motion picture is registered with the*  
4 *United States Copyright Office pursuant to Title 17 of the United*  
5 *States Code.*

6 *(v) Principal photography of the qualified motion picture*  
7 *begins within 150 days of the designation of the taxpayer as a*  
8 *qualified taxpayer by the California Film Commission.*

9 *(B) For the purposes of clause (i) of subparagraph (A) the*  
10 *following additional rules apply:*

11 *(i) In computing the total wages paid or incurred for the*  
12 *production of a qualified motion picture, all amounts paid or*  
13 *incurred by all persons or entities that share in the costs of the*  
14 *qualified motion picture shall be aggregated.*

15 *(ii) In the case of an episodic television series, each episode*  
16 *shall be treated as a separate qualified motion picture.*

17 *(C) For purposes of computing the limitations under this*  
18 *paragraph, “wages” means all amounts described in*  
19 *subparagraph (A) of paragraph (14), provided that these*  
20 *amounts are paid or services performed or rendered within this*  
21 *state.*

22 *(12) “Qualified property” for purposes of this section means*  
23 *purchased or leased tangible personal property used principally*  
24 *in the production of a qualified motion picture, which is subject*  
25 *to tax pursuant to Part 1 (commencing with Section 6001) of*  
26 *Division 2.*

27 *(13) Except as otherwise provided, “qualified taxpayer”*  
28 *means a taxpayer who has paid or incurred the expenses for the*  
29 *qualified amount, and has been allocated tax credits by the*  
30 *California Film Commission pursuant to subdivision (i).*

31 *(14) (A) “Qualified wages” means all of the following:*

32 *(i) Any wages required to be reported under Section 13050 of*  
33 *the Unemployment Insurance Code that were paid or incurred by*  
34 *any taxpayer involved in the production of a qualified motion*  
35 *picture with respect to a qualified individual for services*  
36 *performed on the qualified motion picture within this state.*

37 *(ii) The portion of any employee fringe benefits paid or*  
38 *incurred by any taxpayer involved in the production of the*  
39 *qualified motion picture that are properly allocable to qualified*  
40 *wage amounts described in clause (i).*

1 (iii) Any payments made to qualified entity for services  
2 performed in this state by qualified individuals within the  
3 meaning of paragraph (10).

4 (iv) Remuneration paid to an independent contractor who is a  
5 qualified individual for services performed within this state by  
6 that qualified individual.

7 (B) “Qualified wages” shall not include any of the following:

8 (i) Expenses, including wages, for legal or accounting services  
9 (except production accountants).

10 (ii) Expenses, including wages, in excess of the first  
11 twenty-five thousand dollars (\$25,000) per qualified motion  
12 picture for writers, directors, including music directors, music  
13 composers, music supervisors, producers and performers (other  
14 than background actors with no scripted lines).

15 (iii) Expenses, including wages, related to new use, reuse, clip  
16 use, licensing, secondary markets, or delayed residual  
17 compensation, or the creation of any ancillary product,  
18 including, but not limited to, a soundtrack album, toy, game,  
19 trailer, or teaser.

20 (iv) Expenses, including wages, paid or incurred with respect  
21 to acquisition, development, turnaround, or any rights thereto.

22 (v) Expenses, including wages, related to financing, overhead,  
23 marketing, promotion, or distribution of a qualified motion  
24 picture.

25 (15) “Reuse” means any use of a qualified motion picture in  
26 the same medium for which it was created, following the initial  
27 use in that medium.

28 (16) “Secondary markets” means media in which a qualified  
29 motion picture is exhibited following the initial media in which it  
30 is exhibited.

31 (c) (1) Notwithstanding subdivision (i) of Section 23036,  
32 related to credits attributable to a disregarded business entity, in  
33 the case where the credit allowed by this section exceeds the  
34 taxpayer’s tax liability computed under this part, the excess shall  
35 be credited against other amounts due, if any, from the taxpayer  
36 and, except as provided in paragraph (2), the balance, if any,  
37 shall be refunded to the taxpayer.

38 (2) No portion of this credit allowed by this section shall be  
39 refunded to a “S” corporation.

1     (3) *Those amounts that are determined by the Franchise Tax*  
2 *Board to be necessary to make the refunds required by this*  
3 *subdivision, notwithstanding Section 13340 of the Government*  
4 *Code, shall be continuously appropriated from the Corporation*  
5 *Tax Fund, without regard to fiscal years, to the board for the*  
6 *purpose of making those refunds.*

7     (d) *The amount of any credit allowed under this section to the*  
8 *qualified taxpayer (without regard to whether the “tax,” as*  
9 *defined in Section 23036 is reduced) shall be treated as an item*  
10 *of income of the qualified taxpayer from a separate trade or*  
11 *business conducted wholly within this state for the taxable year*  
12 *in which the credit is allowed.*

13     (e) *No credit pursuant to this section shall be allowed unless*  
14 *the qualified taxpayer substantiates by adequate books and*  
15 *records or by sufficient evidence corroborating his or her own*  
16 *statement that:*

17     (1) *The qualified wages on which the credit was calculated*  
18 *were actually paid or incurred in the amount claimed.*  
19 *Substantiation of this item shall include proof that the services*  
20 *were performed in California.*

21     (2) *The motion picture was a qualified motion picture.*  
22 *Substantiation of this item shall include the following:*

23     (A) *Identification of each qualified individual.*

24     (B) *The specific start and end dates of production.*

25     (C) *The total wages paid and the amount and type of qualified*  
26 *property purchased.*

27     (D) *The amount of qualified wages paid to each qualified*  
28 *individual.*

29     (E) *The copyright registration number, as reflected on the*  
30 *certificate of registration issued under the authority of Section*  
31 *410 of Title 17 of the United States Code, relating to registration*  
32 *of claim and issuance of certificate. The registration number*  
33 *shall be provided on the return claiming the credit.*

34     (f) *The Franchise Tax Board may prescribe rules and*  
35 *regulations to carry out the purposes of this section including*  
36 *any rules and regulations necessary to establish procedures,*  
37 *processes, requirements, and rules identified in or required to*  
38 *implement this section.*

1 (g) Subdivision (c) of Section 19341, relating to interest on  
2 overpayments, shall not apply to any return claiming a credit  
3 under this section.

4 (h) If the qualified taxpayer fails to provide the copyright  
5 registration number as required in subparagraph (E) of  
6 paragraph (2) of subdivision (f), or fails to attach the  
7 certification, the credit shall be disallowed and assessed and  
8 collected under Section 19051.

9 (i) For purposes of this section, the California Film  
10 Commission shall do all of the following:

11 (1) Allocate tax credits to qualified taxpayers, and, by March  
12 1, 2006, promulgate rules and regulations necessary to  
13 administer this section.

14 (2) Establish a procedure for qualified taxpayers to file with  
15 the commission a written application, on a form jointly  
16 prescribed by the commission and the Franchise Tax Board, for  
17 allocation of tax credits. The application shall be filed under  
18 penalty of perjury and include, but not be limited to, the  
19 following information:

20 (A) The budget for the motion picture production.

21 (B) The number of production days.

22 (C) A financing plan for the production.

23 (D) Any other information deemed relevant by the  
24 commission.

25 (3) Determine and designate who is a qualified taxpayer  
26 meeting the requirements of this section.

27 (4) Process and approve, or reject, all applications on a  
28 first-come, first-served basis.

29 (j) The total aggregate amount of credits that may be allocated  
30 in any calendar year pursuant to this section and Section  
31 17053.35 shall not exceed \_\_\_\_ million dollars (\$\_\_\_\_). Any  
32 application for an allocation of tax credits received by the  
33 California Film Commission after the maximum amount of  
34 credits have been allocated for a particular calendar year shall  
35 be treated as an application for tax credits in the succeeding  
36 calendar year.

37 SEC. 6. (a) On or before December 31, 2010, the Business,  
38 Transportation and Housing Agency shall report to the  
39 Legislature on the effectiveness of the tax incentives created by

1 *this act. In preparing the report, the agency shall consider, but is*  
2 *not limited to considering, all of the following:*

3 *(1) The number and increase or decrease of qualified motion*  
4 *pictures produced in California.*

5 *(2) The amount of total qualified wages paid or incurred in*  
6 *California.*

7 *(3) The level of employment in the production industry in*  
8 *California.*

9 *(b) The agency may consult with the Employment*  
10 *Development Department, the Franchise Tax Board, the State*  
11 *Board of Equalization, representatives of industry and labor*  
12 *organizations, and agencies of local government before*  
13 *completing its report.*

14 *SEC. 7. The provisions of this act are severable. If any*  
15 *provision of this act or its application is held invalid, that*  
16 *invalidity shall not affect other provisions or applications that*  
17 *can be given effect without the invalid provision or application.*

18 *SEC. 8. No reimbursement is required by this act pursuant to*  
19 *Section 6 of Article XIII B of the California Constitution because*  
20 *the only costs that may be incurred by a local agency or school*  
21 *district will be incurred because this act creates a new crime or*  
22 *infraction, eliminates a crime or infraction, or changes the*  
23 *penalty for a crime or infraction, within the meaning of Section*  
24 *17556 of the Government Code, or changes the definition of a*  
25 *crime within the meaning of Section 6 of Article XIII B of the*  
26 *California Constitution.*

27 *SEC. 9. This act provides for a tax levy within the meaning of*  
28 *Article IV of the Constitution and shall go into immediate effect.*

29 ~~SECTION 1. (a) It is the intent of the Legislature to enact~~  
30 ~~legislation to discourage “runaway production” in the motion~~  
31 ~~picture industry in this state.~~

32 ~~(b) For the purpose of this section, “runaway production”~~  
33 ~~means the practice of producing and filming motion pictures~~  
34 ~~outside this state.~~